IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Midwest Operating Engineers Welfare Fund; Midwest Operating Engineers Pension Trust Fund; Operating Engineers Local 150 Apprenticeship Fund; Local 150 IUOE Vacation Savings Plan; Midwest Operating Engineers Retirement Enhancement Fund; International Union of Operating Engineers, Local 150, AFL-CIO; and, Construction Industry Research and Service Trust Fund,	)	Case No.
Plaintiffs,	)	Judge:
v.	)	
Millwright Machine, Inc., an Indiana corporation,	)	
Defendant.	)	

COMPLAINT

Plaintiffs International Union Of Operating Engineers, Local 150, AFL-CIO (hereafter, "Local 150" or "the Union"); Midwest Operating Engineers Welfare Fund; Midwest Operating Engineers Pension Trust Fund; Operating Engineers Local 150 Apprenticeship Fund; Local 150 IUOE Vacation Savings Plan; Midwest Operating Engineers Retirement Enhancement Fund (collectively "the Funds"); and Construction Industry Research and Service Trust Fund ("CRF") bring this action to obtain reports and collect contributions and dues owed, if any, from Defendant Millwright Machine, Inc. ("Millwright Machine").

COUNT I. SUIT FOR DELINQUENT CONTRIBUTIONS AND REPORTS

Facts Common to All Counts

1. The Union is an employee organization under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(4); and a labor organization under the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 152(5).

2. Defendant Millwright Machine is an "Employer" within the meaning of ERISA, 29 U.S.C. § 1002(5) and an "Employer" within the meaning of the LMRA, 29 U.S.C. § 152(2). It is a corporation engaged in the construction industry with its principal office in Dyer, Indiana. Millwright Machine has identified Thomas B. Krukowski as its President (Exhibit A).

3. On June 14, 2012, Millwright Machine through Thomas B. Krukowski signed the National Maintenance Agreement ("NMA") (Exhibit B) with the International Union of Operating Engineers. The NMA requires Millwright Machine to make fringe benefit contributions to the Funds in accordance with the terms of the local labor agreement known as the Northwest Indiana Contractors' Association Agreement ("CBA") (Exhibit C).

4. The Funds are "employee welfare benefit plans" and/or "plans" within the meaning of ERISA, 29 U.S.C. § 1132(e)(2).

5. The NMA also binds Millwright Machine to the Agreements and Declarations of Trust ("Trust Agreements") incorporated by reference in the CBA. The CBA and Trust Agreements specifically require Millwright Machine to:

(a) Submit a monthly report stating the names and number of hours worked by every person on whose behalf contributions are required and accompany these reports with payment of contributions based on an hourly rate identified in the CBA;

(b) Compensate the Funds for the additional administrative costs and burdens imposed by its delinquency through payment of liquidated damages in the amount of ten percent of untimely contributions, or twenty percent of such contributions should the Funds be required to file suit;

(c) Pay interest to compensate the Funds for the loss of investment income;

(d) Make its payroll books and records available to the Funds for the purpose of an audit to verify the accuracy of past reporting, and pay any and all costs incurred by the Funds in pursuit of an audit where a delinquency in the reporting or submission of contributions is identified;

(e) Pay the Funds' reasonable attorneys' fees and costs incurred in the prosecution of any action to collect outstanding reports, delinquent contributions, or compliance with an audit request;

(f) Furnish to the Funds a bond in an amount acceptable to the Funds.

6. The CBA also requires Millwright Machine to make contributions to CRF. CRF is a labor management cooperative committee as that term is defined under Section 302(c)(9) of the LMRA, 29 U.S.C. § 186 (c)(9). The CBA places the same obligations on Millwright Machine with respect to CRF as it does the Funds.

7. The NMA and CBA further require Millwright Machine to deduct administrative dues from employees' wages (also known as a "dues check off") and remit those dues to the Union on a monthly basis utilizing a form remittance report. Where Millwright Machine does not do so, the Union is entitled to liquidated damages, attorneys' fees and any other cost of collection.

8. Millwright Machine has become delinquent in the submission of its reports and related contributions due the Funds and CRF, and reports and dues to the Union. As a result of this delinquency, it owes the Funds and CRF reports and all related contributions, liquidated damages, interest and costs and fees, and reports, dues, and liquidated damages to the Union.

Jurisdiction and Venue

9. This Court has jurisdiction over this action pursuant to ERISA, 29 U.S.C. §§ 1132, 1145 and 28 U.S.C. § 1331, because ERISA is a federal statute.

10. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA because the Funds are administered in Cook County, Illinois.

Allegations of Violations

11. ERISA states: "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement." 29 U.S.C. § 1145.

12. Where an employer fails to submit contribution reports and contributions timely, ERISA permits the Funds to file suit under ERISA to collect the fringe benefit contributions, liquidated damages, interest, attorneys' fees and costs. ERISA also permits the Funds to seek an injunction that requires submission of outstanding reports so that the Funds may determine whether additional sums are due to the Funds. Alternatively, the Funds may seek an audit to establish whether such sums are due, and/or estimate the amounts due.

13. Millwright Machine has violated ERISA and breached the NMA, CBA, and the Trust Agreements because it has failed to timely submit its reports and contributions to the Funds. Millwright Machine has failed to submit reports or payments for the months of July through August 2012, October through December 2012, February through March 2013, March 2014, June 2014 through July 2015, October 2015 through January 2016, and March 2016.

WHEREFORE, the Funds respectfully request that the Court:

A. Enjoin Millwright Machine to perform specifically its obligations to the Funds, including submission of the required reports and contributions due thereon to the Funds in a timely fashion;

B. Enjoin Millwright Machine at the Funds' option to submit to an audit of its payroll books and records in order to determine whether Millwright Machine owes additional sums to the Funds, and pay the costs of such an audit; or alternatively at the Funds' option require Millwright Machine to pay any contributions reasonably estimated to be due by the Funds for the period when Millwright Machine failed and refused to timely submit contribution reports;

C. Enter judgment in favor of the Funds and against Millwright Machine for all unpaid contributions identified in Millwright Machine's contribution reports;

D. Enter judgment against Millwright Machine and in favor of the Funds for liquidated damages, and interest, associated with all delinquent contributions, along with attorneys' fees and costs incurred in this action;

E. Provide the Funds with such further relief as may be deemed just and equitable by the Court, all at Millwright Machine's cost.

COUNT II. SUIT TO COLLECT CRF CONTRIBUTIONS

1-8. CRF re-alleges and incorporates herein by reference paragraphs 1 through 8 of Count I as if fully stated herein.

Jurisdiction and Venue

9. This Court has jurisdiction over this action pursuant to § 301 of the LMRA, 29 U.S.C. § 185 and 28 U.S.C. § 1331.

10. Venue is proper in this Court pursuant to 29 U.S.C. § 185(a) because this Court has jurisdiction over the parties and CRF's principal office is located within the geographic jurisdiction of this Court.

Allegations of Violations

11. Millwright Machine has not submitted its contribution reports to CRF for the period July through August 2012, October through December 2012, February through March 2013, March 2014, June 2014 through July 2015, October 2015 through January 2016, and March 2016, nor made payment of contributions. Accordingly, Millwright Machine is in breach of its obligations to the CRF under the NMA, CBA and Trust Agreements.

WHEREFORE, CRF respectfully requests that the Court:

A. Order and enjoin Millwright Machine to submit all delinquent monthly contribution reports and contributions;

B. Enter judgment in favor of CRF and against Millwright Machine for all unpaid contributions, liquidated damages, interest, CRF's reasonable attorneys' fees and costs, including any amounts estimated to be due in view of Millwright Machine's failure to submit all contribution reports required by the CBA;

C. Award CRF such further relief as may be deemed just and equitable by the Court, all at Millwright Machine's cost.

COUNT III. SUIT TO COLLECT UNION DUES

1-8. The Union re-alleges and incorporates herein by reference paragraphs 1 through 8 of Count I as if fully stated herein.

Jurisdiction and Venue

9. This Court has jurisdiction over this action pursuant to § 301 of the LMRA, 29 U.S.C. § 185.

10. Venue is proper in this Court pursuant to 29 U.S.C. § 185(a) because the Court has jurisdiction over the parties, and the Union's principal office is located within the geographic jurisdiction of this Court.

Allegations of Violations

11. Millwright Machine has not submitted its remittance reports to the Union for the period January 2012 through March 2016, nor made payment of union dues for those months. Accordingly, Millwright Machine is in breach of its obligations to the Union under the NMA and CBA.

WHEREFORE, the Union respectfully requests that the Court:

A. Order Millwright Machine to submit all delinquent monthly dues reports;

B. Enter judgment in favor of the Union and against Millwright Machine for all unpaid dues, liquidated damages, the Unions reasonable attorneys' fees and costs, including any amounts estimated to be due because Millwright Machine failed to submit all dues reports required by the CBA;

C. Enjoin Millwright Machine to perform specifically its obligations to the Union including timely submission of reports and contributions as required by the plans and the CBA;

D. Award the Union such further relief as may be deemed just and equitable by the Court, all at Millwright Machine's cost.

Dated: December 14, 2016

Respectfully submitted,

By: /s/ Robert A. Paszta
One of the Attorneys for Plaintiffs

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